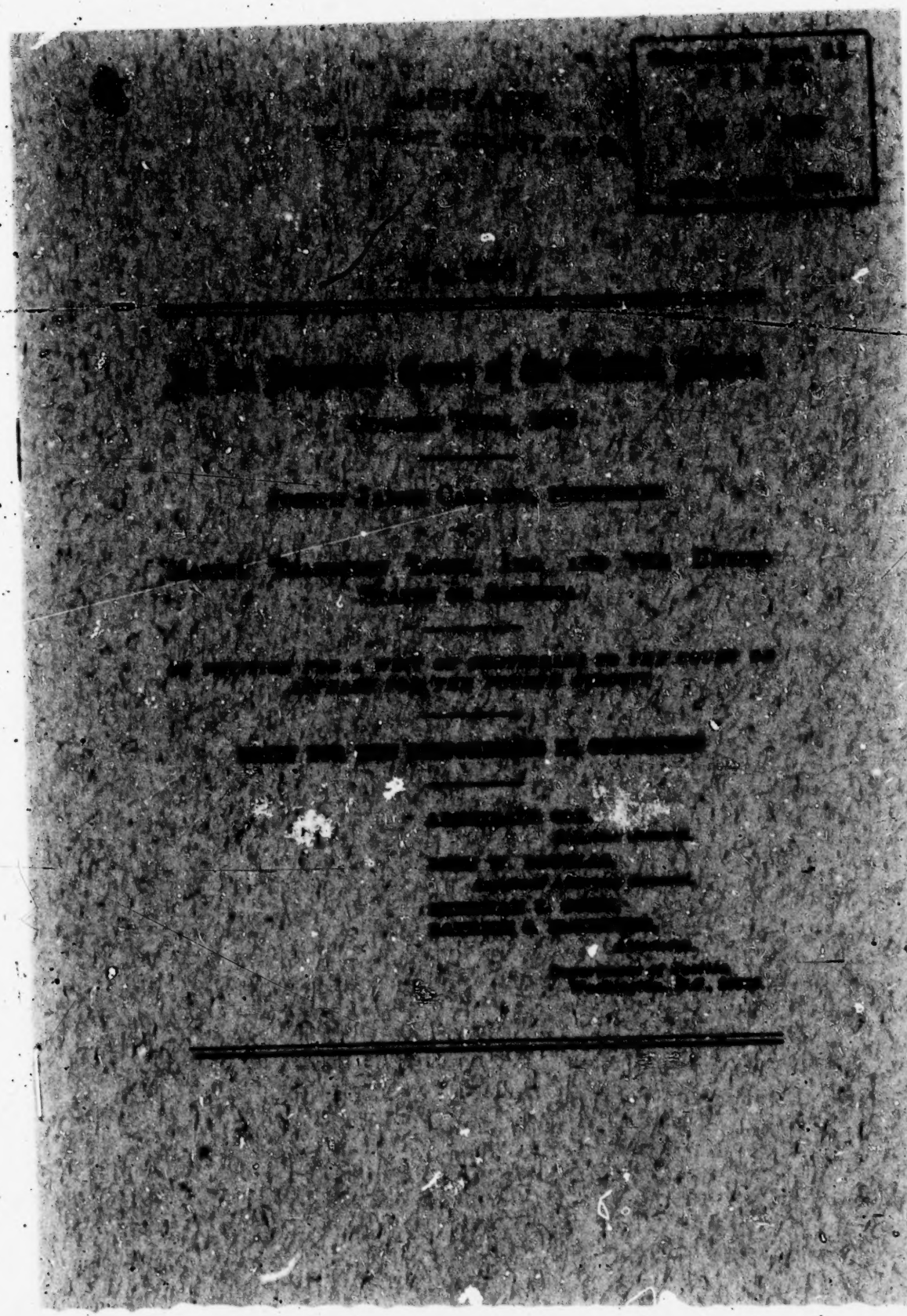

In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 366

JOSEPH JAMES CARLENO, PETITIONER

v.

MARINE TRANSPORT LINES, INC. AND THE UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the district court is reported at 209 F. Supp. 859 and is set out in the brief filed by the United States as appellee below (Br. App. 1–14). The opinion of the court of appeals (Pet. App. 15–20) is reported at 317 F. 2d 662.[1]

[1] "Br. App." refers to the appendix to the brief filed by respondent as appellee in the court below. "Pet." refers to petitioner's petition in this Court. "Pet. App." refers to the appendix thereto.

707-857—63

JURISDICTION

The judgment of the court of appeals was entered on May 15, 1963. The petition for a writ of certiorari was filed on August 13, 1963. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the district court properly found that petitioner's heart attack was not caused or aggravated by any unseaworthy condition of the ship on which he was employed or by the negligence of its officers.

2. Whether the district court properly found that petitioner had reached the point of maximum cure when he was declared "fit for duty" and re-employed as a seaman.

STATEMENT

Petitioner instituted this action against Marine Transport Lines, Inc., as operating agent, and the United States, as owner, of the United States Naval Ship MUIR WOODS, for damages arising out of a heart attack sustained aboard the vessel. Petitioner alleged that the attack was caused by overexertion attributable to the unseaworthiness of the vessel and the negligence of her officers, and that it was aggravated by failure to furnish adequate medical attention. He also claimed damages for the untimely termination of his maintenance and cure. Petitioner's libel was dismissed by the district court, and the court of appeals affirmed (Pet. App. 16).

The district court's findings of fact, which the court of appeals held to be "generously supported by evidence" (Pet. 18), may be briefly summarized:

Petitioner was employed as a boatswain aboard the MUIR WOODS, and, as such, his duties were primarily supervisory in nature. Prior to entering on this employment, petitioner underwent a physical examination and was found to be free from disability. On June 11, 1958, while the MUIR WOODS was bound out of Savannah, Georgia, en route to Aruba, West Indies, petitioner was ordered by the chief mate to see that certain hoses, which were to be used in the transfer of fuel, were rigged to manifolds upon the deck. As boatswain, petitioner's duties in such an operation were to "lay out" the work and guide it to a successful completion. Petitioner made no complaint regarding the work assigned. He had at his disposal the entire deck crew of ten men for the execution of the order, and from this group he chose six for the task. The choice of method to accomplish the work was also petitioner's responsibility. The ship's booms were not rigged at that time so as to be employable in the moving of the hoses, but handy-billies (block and tackle arrangements) were available, as were winches and whips. The evidence warranted a finding that three to six men could perform the work without too much difficulty even without the use of mechanical devices. Although there was additional manpower available if needed, and although his duties were only supervisory, petitioner joined in the manual labor of moving and rigging the hoses. The job was

completed in about four hours without incident, and there was nothing unusual about it although it was performed in extremely hot weather.

During that evening petitioner volunteered for three hours of overtime work straightening a deck locker. He retired for the night around 9:00 p.m. Between 3:00 and 4:00 a.m., petitioner awoke suffering from pains in his chest, nausea, and profuse perspiration. He went to the purser's cabin for treatment since the purser served as the ship's medical officer. The purser, who was not a physician, diagnosed petitioner's condition as a respiratory infection, administered an antibiotic, and told petitioner to return to bed and to remain there until the ship docked the following day and he could secure medical attention in Aruba.

The purser immediately reported to the first mate that petitioner was not fit for duty until further medical attention was given him. Before breakfast that morning, as the vessel was docking, the purser went to check on petitioner and found him in the messroom drinking coffee. Petitioner's appearance was improved, and he stated that he was feeling "a lot better." Petitioner was then sent ashore to visit a doctor, accompanied by a fellow seaman. Petitioner asked for no assistance and made no complaint about walking to the doctor's office, which was about one mile from the dock. The doctor diagnosed his ailment as a kidney condition, and he arranged for hospitalization. In the hospital it was determined that petitioner had suffered a heart attack.

Following his initial hospitalization in Aruba for about a month-and-a-half, petitioner returned to the United States and was placed in a Public Health Service hospital for one week. He continued under medical care as an out-patient until December 18, 1958, when he was released and certified as "fit for duty." Prior to that date, on December 3, petitioner was examined by a physician who expressed the opinion that petitioner then had received the maximum possible benefit from medical care.

In the spring of 1959, having been declared fit for duty, petitioner returned to the MUIR WOODS, and served as boatswain for approximately five weeks. Thereafter, he served both as boatswain and ordinary seaman on various ships in 1960 and 1961, until he was advised to give up his work as a seaman and brought this action.

ARGUMENT

Notwithstanding the petition's failure to say so expressly, the petitioner in this case is seeking to have this Court review the sufficiency of the evidence to sustain the district court's findings, made upon proper criteria, (1) that the petitioner's heart attack was not caused or aggravated by any unseaworthy condition of the ship, (2) that the purser's failure to diagnose petitioner's ailment correctly did not constitute negligence, and (3) that maintenance and cure were properly terminated when petitioner was declared "fit for duty" and returned to his earlier employment as a seaman. None of these factual determinations, which were fully concurred in by the court of appeals, is appropriate for review by this Court.

1. With respect to the finding concerning the reason for petitioner's heart attack, petitioner urges several grounds in support of the claim that unseaworthiness was the cause. All of these, including the alleged "accelerated timetable" (Pet. 7), "denial of the use of available machinery" (Pet. 7), "almost unendurable heat" (Pet. 7), "lack of sufficient personnel" (Pet. 8), and the implication that petitioner was "duty bound" (Pet. 9) to perform manual labor, are either in square conflict with the record facts or were considered and rejected by the district court. The court summarized its findings as follows (Br. App. 6):

> There was no improvident order; there was no command that the libellant participate in the required manual labor; there was no improper or unsafe place to work; there was no breach of any duty; there was no shortage of manpower; there was no lack of adequate and properly maintained equipment with which to do the work; the ship's owners and officers had no knowledge of any pre-existing heart disease before the libellant undertook the task of moving the hoses. * * *

There was, as the court of appeals observed, generous support in the record for these findings. Hence, as in the recent case of *Morales* v. *City of Galveston*, 370 U.S. 165, 171, "[t]he trier of facts ruled, under proper criteria, that the [vessel] was not in any manner unfit for the service to which she was to be put * * *." The court of appeals correctly held that these findings were not clearly erroneous, *McAllister* v. *United States*, 348 U.S. 19, 20-21, and the concurrent findings of the two lower courts on the factual issue of unseaworthiness should

not be disturbed here, *Mahnich* v. *Southern S.S. Co.*, 321 U.S. 96, 98–99.

2. Petitioner also contends that the purser must have been negligent in failing to recognize symptoms allegedly "classical to a heart attack (Pet. 10). The district court's finding to the contrary is clearly supported by the record. Significantly, a licensed medical doctor in Aruba mistook these "classical" symptoms for those of a kidney ailment (Br. App. 15–16), and it was not until petitioner was hospitalized and thoroughly examined that the correct diagnosis was made (Br. App. 5). Moreover, the purser ordered petitioner to remain in bed until the ship docked, and he reported to the first mate that the petitioner was unfit for duty. There was nothing more that could be done aboard the vessel. Contrary to the purser's instructions, petitioner did not remain in bed, but arose and reported that he felt "a lot better" (Br. App. 25–26). The district court could surely find that the purser acted reasonably in believing that petitioner's condition had improved and sending him ashore to walk a short distance to a doctor's office. Accordingly, this finding of fact, concurred in by two lower courts, requires no further review.

3. Petitioner's contention that the district court erred in finding that his right to maintenance and cure terminated on December 18, 1958, also concerns only findings of fact. Maintenance and cure continue only until the seaman is "so far cured as possible." *Farrell* v. *United States*, 336 U.S. 511, 518.

Maximum recovery is that point in the course of cure when remedial medicine can do no more. *Morcwitz* v. *S.S. Matador*, 306 F. 2d 144 (C.A. 4), certiorari denied, 372 U.S. 906; *Maruaga* v. *United States*, 172 F. 2d 318 (C.A. 2). The finding of the district court as to the date of maximum recovery was based on medical testimony (Br. App. 35–36), on a Public Health hospital certification that petitioner was "fit for duty" on that date (Br. App. 5, Pet App. 20), and on his actual return to work shortly thereafter (Br. App. 17–20). It presents no issue appropriate for review by this Court.

4. Petitioner also appears to contend that the district court erroneously applied a "doctrine of foreseeability" to the unseaworthiness claim (Pet. 9). This assertion is based upon a misreading of the district court's opinion. Both references in the opinion to what was "reasonably foreseeable" or what could be "reasonably anticipated" (Br. App. 6, 9) relate to allegations of negligence, as appears clearly from the sentences which follow those in which foreseeability is discussed. In each instance the context demonstrates that the court was considering claims that the vessel's officers had acted negligently—first in not ordering petitioner to desist from manual labor, and then in issuing an improvident order. Neither related to any claim based upon the ship's alleged unseaworthy condition.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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